



**HALOGEN**  
SOFTWARE

**SOFTWARE LICENSE AND SERVICES AGREEMENT**

Between:

and:

**HALOGEN SOFTWARE INC.**  
17 Auriga Dr.  
Ottawa, Ontario  
K2E 7T9  
Canada

**LEON COUNTY, FLORIDA**  
301 South Monroe Street  
Tallahassee, FL  
32301 USA

("HALOGEN")

(the "Customer")

Contract No. **11-2005-271**

This Agreement, including Appendix A and any attachments thereto, sets out the terms pursuant to which the Customer may use the Licensed Materials and pursuant to which HALOGEN will provide Maintenance to the Customer.

**1 LICENSE**

(a) HALOGEN grants to the Customer, solely for the purpose of conducting Reviews, a non-exclusive, non-transferable right, during the term of this Agreement, to install and execute the Software on the Customer's internal servers. HALOGEN will deliver one copy of the Licensed Materials to the Customer in electronic form. The Customer may make copies of the Documentation, and may use the Documentation and any such copies at the Customer's facilities solely for the purpose of assisting the Customer in using the Software. In this Agreement: "**Review**" means creating an evaluation document for employee or contractor of Customer; "**Software**" means the software indicated on Appendix A in executable object code form, and any revisions or updates provided by HALOGEN to the Customer pursuant to this Agreement; "**Respondents**" means the employees, contractors or customers of the Customer who are authorized by the Customer to access the Software; "**Documentation**" means the manuals and user guides provided with the Software by HALOGEN pursuant to this Agreement, exclusive of training materials as described in Appendix A-5; and "**Licensed Materials**" means the Software and the Documentation.

(b) The Customer may not, without the express written permission of HALOGEN: (i) use, copy, modify, adapt, improve, maintain, sell, rent or manufacture the Licensed Materials, or any portion thereof, or sublicense any of the rights granted under this Agreement, except as expressly set out in this Agreement; (ii) disassemble, de-compile, translate or convert into human readable form or into another computer language, reconstruct or decrypt, or reverse engineer, all or any part of the Licensed Materials; (iii) remove any copyright, patent, trade-mark, design right, trade secret, or any other proprietary rights legends from the Licensed Materials; or (iv) use the Software to perform any benchmarks or comparisons for the purposes of publication or disclosure to any third party, alone or in conjunction with any other product. The Customer may make a reasonable number of back-up copies of the Software for use as part of the Customer's disaster recovery plan.

(c) Certain software of third parties is embedded in the Software pursuant to licenses provided by those third parties to HALOGEN. The Customer acknowledges that the rights provided by HALOGEN under this Agreement are subject to the terms of those third-party licenses. The Customer is subject to and will comply with the terms of those third-party licenses to the extent that HALOGEN makes those terms known to the Customer and to the extent that the terms purport to be applicable to the Customer.

(d) If the Licensed Materials are acquired by or for the U.S. Government, then they are provided with Restricted Rights. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, or clause 18-52.227-86(d) of the NASA Supplement to the FAR, as applicable. Contractor/Manufacturer is HALOGEN.

**2 MAINTENANCE**

(a) HALOGEN will provide Maintenance to the Customer from the Effective Date until the first anniversary of the Effective date (the "**First Maintenance Term**"), and for successive annual terms in respect of which the Customer has paid to HALOGEN the Annual Maintenance Fee when due (the "**Subsequent Maintenance Terms**"). "**Maintenance**" means the

provision by HALOGEN to the Customer of: (i) any enhancements or modifications to the Software that HALOGEN makes available to its clients generally; and (ii) telephone assistance by a qualified representative of HALOGEN between 8:30 a.m. and 5:00 p.m. Monday through Friday during regular business days observed by Halogen (Eastern Standard time) to attempt to correct or bypass defects or errors in the Software that have been brought to the attention of HALOGEN by the Customer. HALOGEN may provide such telephone assistance through a designee of its choice to up to three designated contacts of the Customer who are trained and knowledgeable in the use of the Licensed Materials. The Customer or HALOGEN may terminate Maintenance at the end of an annual term by providing the other with at least 30 days prior written notice.

(b) Maintenance is only provided for the most recent version of the Software and the version prior to the most recent version. HALOGEN has no obligation to provide the Customer with Maintenance unless the Customer has paid for Maintenance in advance as required under this Agreement. If the Customer ceases to pay for Maintenance and later requests Maintenance, the Customer must pay to HALOGEN the Annual Maintenance Fees for the period in which no Maintenance was provided. HALOGEN has no obligation to provide Maintenance if the Customer has made any modifications to the Licensed Materials. HALOGEN may also charge the Customer its then applicable list price for analysis or removal of errors that are caused by improper operation or handling of the Licensed Materials or caused by circumstances unrelated to HALOGEN.

### 3 LIMITED WARRANTIES AND DISCLAIMER OF WARRANTIES

(a) HALOGEN warrants that during the period beginning on the Effective Date and continuing for 30 days thereafter: (i) the Software will conform substantially to the description set out in the Documentation; (ii) HALOGEN has the right to grant to the Customer the rights granted in Section 1 without violating the rights of any third party; and (iii) the media upon which the Licensed Materials are provided are free from defects in materials and workmanship.

(b) The Customer's exclusive remedy and HALOGEN's sole obligation with respect to the breach of any of the foregoing warranties is for HALOGEN to: (i) make commercially reasonable efforts to correct or provide the Customer with a workaround for the failure of the Software to conform substantially to the description thereof in the Documentation or, at HALOGEN's sole option, provide the Customer with a refund for the License Fees paid with respect to such Software; and (ii) provide the Customer with replacement media if there are defects in materials or workmanship in the media upon which the Licensed Materials are provided and the media is returned to HALOGEN within 30 days following the Effective Date. The warranties in this Section 3 do not apply if: (i) the Software is not used in accordance with HALOGEN's instructions; (ii) the Software is customized, modified, adapted or improved by the Customer; (iii) the Software is defective or inoperative as a result of the malfunction of the Customer's computer equipment; or (iv) any other cause within the control of the Customer results in the Software becoming defective or inoperative.

(c) The warranties in this Section 3 are the only warranties of HALOGEN with respect to the Licensed Materials and the Maintenance, and are in lieu of all other warranties and conditions, express or implied, including those concerning merchantability and fitness for a particular purpose.

(d) The Customer acknowledges that the Software typically requires some configuration upon installation, that certain customary infrastructure must be in place in order for certain functionality to work, and that the provision of this infrastructure is not part of this Agreement.

### 4 TERM AND TERMINATION

This Agreement is effective on the date it is signed by HALOGEN (the "Effective Date"), and unless earlier terminated in accordance with this Agreement, automatically terminates when the Customer ceases on a regular basis to use the Licensed Materials. Either party may terminate this Agreement by written notice if: (i) the other party breaches or fails to observe or perform any of its obligations set out in this Agreement, including failure to pay any License Fees owing, and fails to cure such breach or failure within 30 days after written notice; or (ii) if either party persistently breaches its obligations under this Agreement. Upon termination of this Agreement, Customer will cease use of the Licensed Materials and will return to HALOGEN or destroy all copies of the Licensed Materials in its possession.

### 5 OWNERSHIP AND CONFIDENTIAL INFORMATION

(a) HALOGEN or its licensors retain all interest in the Licensed Materials and all copies thereof, including all intellectual property rights therein, and nothing in this Agreement transfers to the Customer any ownership interest in the Licensed Materials or to any copy thereof or any license right not expressly granted in this Agreement.

(b) The Customer acknowledges that the Licensed Materials contain Confidential Information, and HALOGEN acknowledges that it may receive Confidential Information from the Customer. Neither party will use the Confidential Information of the other party except for the purposes contemplated in this Agreement. Each party will use reasonable commercial efforts to maintain the Confidential Information of the other party in strict confidence and will not disclose the Confidential Information to any person except employees, contractors and consultants who have a need to access the Confidential Information. "Confidential Information" means all confidential and proprietary information of HALOGEN contained in or relating to the Licensed Materials, or of the Customer provided to HALOGEN in connection with this Agreement, other than information that: (a) is or becomes part of the public domain through no act or omission on the part of the receiving party; (b) is received from an independent third party who had obtained the information lawfully and was under no obligation of secrecy; (c) was in

the possession of the receiving party before the receiving party received the information from the disclosing party; (d) is independently developed by the receiving party or on its behalf by personnel having no access to the information of the disclosing party at the time of independent development; or (e) is required to be disclosed by the receiving party pursuant to any legal proceedings.

## 6 FEES

(a) The Customer will pay to HALOGEN the License Fees, Maintenance Fees and other fees described in Appendix A.

(b) The License Fees are due and payable on the Effective Date. If the number of Review Licenses (as defined in Appendix A) exceeds the maximum number of Review Licenses specified in Appendix A, the Customer will pay to HALOGEN, in addition to all other fees, the difference between the License Fee for the number of Review Licenses as set out in Appendix A and the license fee generally charged by HALOGEN for the number of Review Licenses actually accessing the Software.

(c) The Customer will pay HALOGEN for the First Maintenance Term and each Subsequent Maintenance Term an annual maintenance fee (the "**Annual Maintenance Fee**") as set out in, and subject to adjustment in accordance with, Appendix A. The Annual Maintenance Fee is payable annually in advance. The Annual Maintenance Fee for the First Maintenance Term is due on Effective Date. The Annual Maintenance Fee for each Subsequent Maintenance Term is due on the anniversary of the Effective Date in advance of such Subsequent Maintenance Term. Additional Maintenance Fees that result from the acquisition of additional Software Licenses are due when the additional Software Licenses are purchased by the Customer and will be prorated to the end of the applicable maintenance term.

(d) The Customer will pay all taxes, tariffs, duties and other charges or assessments imposed or levied by any government or governmental agency of the jurisdiction in which the Customer resides in connection with this Agreement other than taxes based on HALOGEN's net income. All overdue payments bear interest at the rate of 18% per year.

## 7 LIMITATION OF LIABILITY

HALOGEN's maximum liability to the Customer for any claims arising out of breach of contract or negligence is the aggregate of the fees actually paid by the Customer to HALOGEN under this Agreement. HALOGEN is not liable for any claim by the Customer for: (a) punitive, exemplary or aggravated damages; (b) damages for loss of profits or revenue, or failure to realize expected savings; or (c) indirect, consequential or special damages.

## 8 GENERAL

(a) **Audit** The Customer will maintain appropriate records to permit it to determine whether the total number of Review Licenses at any time exceeds the number of Review Licenses set out in Appendix A, and the Customer will provide HALOGEN, immediately upon written request, with a copy of such record certified by an officer of the Customer. If the total number of Review Licenses accessing the Software exceeds the number of Review Licenses set out in Appendix A, the Customer will immediately contact HALOGEN to purchase a license for those additional Review Licenses. The Software may contain functionality that may assist HALOGEN in determining the Customer's compliance with this Agreement.

(b) **Notices** For the purposes of this Agreement, and for all notices and correspondence under this Agreement, the addresses of the respective parties are set out at the beginning of this Agreement and no change of address is binding upon the other party until written notice of the change is received by such party. All notices are effective upon receipt if delivered personally or sent by facsimile and 7 days after mailing if sent by registered mail.

(c) **Force Majeure** If the performance of any obligation of this Agreement other than payment of fees is prevented or restricted by reason of: fire, flood, earthquake, explosion or other casualty or accident or act of God; labour disputes; inability to procure or obtain delivery of parts, supplies, power, equipment or software from suppliers, war or other violence; any law, order, regulation, ordinance, demand or requirement of any governmental authority; or any other act or condition beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, is excused from such performance to the extent of such prevention or restriction, but only if the party so affected takes all reasonable steps to avoid or remove such cause of non-performance and resumes performance forthwith when such causes are removed.

(d) **Injunctive Relief** The Customer acknowledges that damages may not be an adequate remedy to HALOGEN if the Customer breaches its obligations under this Agreement, because such breaches may result in irreparable harm to HALOGEN. The Customer agrees that, upon any such breach, HALOGEN is entitled to appropriate mandatory or negative injunctive relief against the Customer in addition to whatever other remedies HALOGEN has at law.

(e) **Severability** If any provision of this Agreement is deemed to be invalid, illegal or unenforceable, that provision will be severed and deleted, or limited so as to give effect to the intent of the parties to the extent possible, and the parties will use their best efforts to substitute a new provision of similar economic intent and effect for the illegal, invalid or unenforceable provision, and each remaining provision remains in force.

(f) **Assignment** The Customer may permanently assign this Agreement without HALOGEN's consent to a purchaser of all or substantially all of the Customer's assets. Otherwise, neither this Agreement nor any rights granted hereby may be transferred or assigned by the Customer to any other person without HALOGEN's prior written consent (such consent not to be unreasonably withheld). If the Customer assigns this Agreement to a third person as permitted by this paragraph or with

consent from HALOGEN, the Customer will cease all use of the Licensed Materials and destroy or cause to be destroyed all copies thereof within its possession or control, and the third party assignee will agree in writing with HALOGEN to assume all of the Customer's obligations under this Agreement. The Customer will also certify in writing to HALOGEN that the foregoing has been accomplished. HALOGEN may assign this Agreement to any third party and will provide the Customer with notice of any such assignment. HALOGEN may delegate to affiliates of HALOGEN and to agents, suppliers, contractors and resellers of HALOGEN any of HALOGEN's obligations under this Agreement, and HALOGEN may disclose to any such persons any information required by them to perform the duties so delegated to them, but such delegation does not relieve HALOGEN of its obligations under this Agreement.

**(g) Promotion** Each party authorizes the other to indicate in its advertising, marketing and other promotional materials and undertakings that the Customer uses the Licensed Software. The Customer will not represent that the Licensed Software has performance, application or reliability characteristics that do not appear in the Documentation or in other marketing materials.

**(h) Reference** Customer will act as a client reference for HALOGEN on an as needed basis. As well, Customer agrees that they will participate in a success story for the software to be published on HALOGEN's Website.

**(i) Governing Law** This Agreement is governed by and is to be construed in accordance with the laws of the Province of Ontario without reference to its conflict or choice of law rules or principles. The Customer hereby submits to the non-exclusive jurisdiction of the courts of the Province of Ontario for any legal action arising out of this Agreement or the performance of its obligations under this Agreement.

**(j) Survival** The parties hereto agree that the provisions of Section 3(c), 5, 6 and 7 of this Agreement survive the termination of this Agreement.

**(k) Currency** All references to currency are deemed to mean lawful money of the United States unless otherwise indicated.

**(l) Entire Agreement** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior understandings and agreements between the parties with respect thereto.

**Halogen Software Inc.**

**Leon County, Florida**

Signature \_\_\_\_\_

BY: \_\_\_\_\_

Name \_\_\_\_\_

Bill Proctor, Chairman  
Board of County Commissioners

Title \_\_\_\_\_

Date \_\_\_\_\_

ATTEST:  
Bob Inzer, Clerk of the Court  
Leon County, Florida

BY: \_\_\_\_\_

Approved as to Form:  
Leon County Attorney's Office

BY: \_\_\_\_\_

Herbert W.A. Thiele, Esq.  
County Attorney

## APPENDIX A

This Appendix A is part of the attached Software License and Services Agreement and is subject to all the terms of that Agreement.

The Software and the fees payable to HALOGEN are as follows:

### **1. Software**

HALOGEN will issue the eAppraisal module of the EPM (Employee Performance Management) Suite v6.3 to the Customer.

### **2. Review License**

The Customer is granted a license for 800 Review Licenses. The number of Review Licenses limits the number of employees of the Customer that can be appraised each calendar year. A Review License allows an employee of the Customer to be appraised with Halogen eAppraisal by an unlimited number of Respondents an unlimited number of times during the year. "Respondents" means the employees or contractors of the Customer who are authorized by the Customer to access the Software for purposes of conducting a Review.

### **3. License Fee**

The License Fee is US\$ 22.75 per Review License for a total License Fee of US\$ 18,200.00, provided the contract is executed prior to 4:59 pm EST, Friday January 6, 2006.

### **4. Maintenance Fees**

- a) The Maintenance Fee for the First Maintenance Term is US\$ 4,004.00.
- b) The Maintenance Fees may be increased annually by HALOGEN by providing the Customer with notice of not less than 30 days prior to the end of a Maintenance Term. HALOGEN will not increase its Maintenance Fees annually by more than six percent from the fees charged in the previous Maintenance Term, other than increases resulting from an increase in the number of Review Licenses for which the Customer is licensed.

### **5. Services**

#### **a) Training Fees**

The Customer accepts a two-day eAppraisal Administrator Training Course. The course will be provided at the Customer's office. Additionally, a half-day Technical IT installation and Technical Training session will be provided via WebEx as part of the training. The training charge for the two-day eAppraisal Administrator Training Course and the ½ day Technical IT installation and training is US\$ 3,395.00 due and payable on Effective Date plus travel and living expenses which will be billed on completion of the training. Training must be booked and taken within the first twelve months from the Effective Date. If Customer deems it necessary to postpone a scheduled training session, it must notify Halogen's Training Manager in writing. A re-booking fee of US\$ 150.00 will apply. Date changes will be accepted up to ten (10) business days prior to the scheduled session start date.

#### **b) Copyright**

Customer acknowledges that any manuals and other training materials provided by Halogen to Customer in electronic or hard copy format in connection with these training sessions are copyright by Halogen Software Inc. and are for Customer's internal use only. These materials are not to be reproduced, copied or distributed by Customer in any form. Videotaping or other electronic and/or audiovisual recording of a training session conducted by a Halogen Software Trainer is strictly prohibited.

#### **c) Other Services**

There are no additional services included in this quote. Therefore, the Customer is responsible for activities such as review creation, creation and management of respondent e-mail lists, report generation, extracting eAppraisal data for report generation with external tools such as Excel, or the creation of customized extracts for use with external reporting tools. HALOGEN would be pleased to provide any or all of the above services by separate quote. Service fees are due and paid to HALOGEN within 30 days of invoicing by HALOGEN.